



UNIVERSITY OF
TORONTO
FACULTY OF LAW



THE LAW AND PRAXIS OF INTERNATIONAL HUMAN RIGHTS

VOLUME 2

Professor Nehal Bhuta

Fall 2007

**Faculty of Law
University of Toronto**

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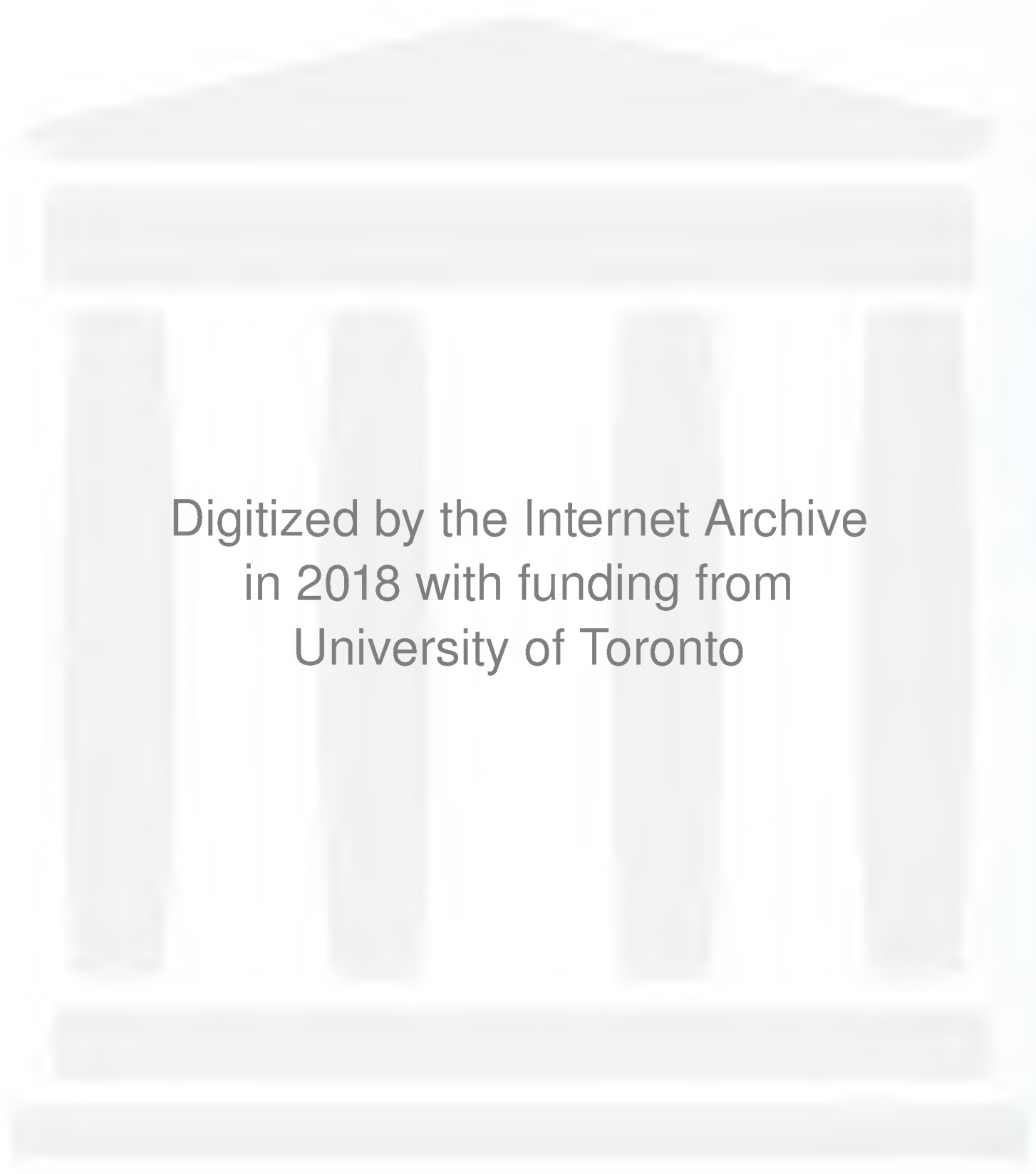
**THE LAW AND PRAXIS OF
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A 24-hour take-home exam to be signed out from and returned to the Records Office. The examination may be taken during any 24 hour period between the first day of the examination period and due no later than the set deadline for written work in the applicable term.

The examination will be in the form of a hypothetical problem raising human rights law issues, and a short essay question. A word-limit on the take-home examination will be strictly enforced.

Reading Schedule

Week 1 (10 September)

- **Introduction and Course Overview**

VOLUME 1

Week 2 (17 September)

- **What Are Human Rights? Politics, Philosophy, Law**
 - a. Martti Koskenniemi, “Human Rights, Politics, and Love,” *Mennesker & Rettigheter (The Nordic Journal of Human Rights)* 4/2001 pp. 33-45 (also reprinted in: *Finnish Yearbook of International Law*, Vol. 13 (2002) pp. 79-94)1
 - b. Claude Lefort, “Human Rights and the Welfare State,” in *Democracy and Political Theory* (Minneapolis: University of Minnesota Press, 1988) 21-44.10
 - c. Sir Hersch Lauterpacht, *International Law and Human Rights* (New York: Praeger, 1950) 94-123.23

Further reading

- d. Ian Balfour and Eduardo Cadava, “Introduction: The Claims of Human Rights,” *The South Atlantic Quarterly*, Vol. 103 (2004) pp. 277-296.39

Week 3 (24 September)

- **Historical Origins: The Age of Revolutions, The Age of Extremes and Human Rights**
 - a. Document: Universal Declaration of Human Rights59
 - b. Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007) 113-145, 176-200.65
 - c. Karl Marx, “On the Jewish Question,” in Robert C. Tucker, ed, *The Marx-Engels Reader, Second Edition* (Norton: New York, 1978) pp.40-46.96
 - d. Mark Mazower, “The Strange Triumph of Human Rights, 1933-1950” *The Historical Journal*, Vol. 47 (2004) pp. 379-398.101

- e. Hannah Arendt, *The Origins of Totalitarianism* (Meridian Books: Cleveland and New York, 1958) Part II, Chapter 9.111
- f. Paul Lauren Gordon, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press: Philadelphia, 2003 [2nd edition]) pp.135-177.130
- g. A.W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford University Press: Oxford, 2004) (“The Burdens of Empire”), pp. 276-8, 289-232.174

Week 4 (1 October)

• Human Rights and the Interstate System

- a. Documents:
 - i. United Nations Charter, Arts 1, 2, 55-74.194
 - ii. United Nations General Assembly, Resolution 60/251, establishing the Human Rights Council, 3 April 2006.216
- b. Christian Tomushcat, *Human Rights between Idealism and Realism* (Oxford University Press: Oxford, 2004), pp. 112-131.220
- c. Hurst Hannum, ed., *Guide to International Human Rights Practice* (Transnational Publishers: New Jersey, 2004 [4th edition]), pp. 43-89.230
- d. Letter of 14 April 2003 from U.S. Mission in Geneva to Special Rapporteur on Extrajudicial Killings.254
- e. Philip Alston, “Reconceiving the UN Human Rights Regime: Challenges Confronting the New Human Rights Council,” Center for Human Rights and Global Justice Working Paper, Number 4, 2006.259
- f. Francoise Hampson, “An Overview of the Reform of the UN Human Rights Machinery” (2007) 7 *Human Rights Law Review* 7-27.299
- g. Human Rights Watch, press release, 10 June 2006, “UN: Rights Council Disappoints Again”.320
- h. Selected documents from the Human Rights Council322

Week 5 (8 October – Thanksgiving. A makeup class will be scheduled)

Weeks 6, 7 and 8 (15, 22 and 29 October)

• The International Covenant on Civil and Political Rights (ICCPR)

- a. The Nature of Obligations
 - i. ICCPR, Preamble, Arts 1-5, Arts 46, 47, 50.410

ii.	Manfred Nowak, <i>CCPR Commentary</i> (NP Engel: Kehl am Rhein, 2005) pp. 27-30, 34-46, 57-72.	417
b.	<u>The Nature of a Human Rights Treaty</u>	
i.	ICJ, <i>Reservations to the Genocide Convention Case</i> , 1951 ICJ Reps, 20- 29, 46-48, 51-56	437
ii.	Inter-American Court of Human Rights, <i>The Effects of Reservations Advisory Opinion</i> (1982), paras. 17-40.	456
c.	<u>Reservations</u>	
i.	Vienna Convention on the Law of Treaties, Arts. 19-23	467
ii.	Human Rights Committee, <i>General Comment 24</i>	470
iii.	<i>Observations of the Governments of the United Kingdom on General Comment 24</i> , 3 IHRR (1996) 261.	479
d.	<u>Extraterritoriality</u>	
i.	ICCPR, Art 2 (1)	484
ii.	Marc Bossuyt, <i>Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights</i> (Martinus Nijhoff: Dordrecht, 1987) pp. 52-56.	485
iii.	Nowak, <i>CCPR Commentary</i> , pp.43-45 (re-read).	424
iv.	Declassified U.S. government documents (6 pages)	491
v.	Human Rights Committee: <i>Lopez Burgos v Uruguay</i> (1981) and <i>Concluding Observations on the Report of the State of Israel</i> (2003).	497
vi.	ICJ, <i>Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory</i> (2004), paras. 102-113.	511
vii.	European Court of Human Rights, <i>Ilascu v. Moldova</i> (2004) pp.41-59, 69- 92	521

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viii.	<i>The Queen (ex parte Al-Skeini and Ors) v. Secretary of State for Defence</i> , 21 December 2005, paras 1-30, 54-128.	1
e.	<u>The Human Rights Committee</u>	
i.	ICCPR, Arts 28-41; Optional Protocol I (entire).	65

ii.	Henry Steiner, Philip Alston and Ryan Goodman, <i>International Human Rights: Law, Politics, Morals</i> (forthcoming, 2007), extract.	67
iii.	Dominic McGoldrick, <i>The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights</i> (Clarendon Press: Oxford, 1991) pp.50-55, 71-79, 98-104.	71
iv.	Human Rights Committee, <i>General Comment 30</i>	94
v.	Example of Periodic Reporting and Consideration by the Committee: United States of America, 2006 (extracted from Steiner, Alston and Goodman, forthcoming 2007).	96
f.	<u>Human Rights Committee: General Comments</u>	
i.	Philip Alston, “The Historical Origins of the Concept of ‘General Comments’ in Human Rights Law” in L. Boissons de Chazournes and V. Gowland Debbas, eds, <i>The International Legal System in Quest of Equity and Universality: Liber Americorum Georges Abi-Saab</i> (2001), extracted in Steiner, Alston and Goodman, forthcoming, 2007.	119
ii.	<i>Human Rights Committee:</i>	
	• General Comment 2	125
	• General Comment 5	126
	• General Comment 6	127
	• General Comment 7	129
	• General Comment 20	132
	• General Comment 29	135
	• General Comment 31	143

Certain Articles of the ICCPR in the Jurisprudence of the Human Rights Committee

a.	<u>Procedure of Individual Complaints</u>	
i.	Extracts of the Human Rights Committee Rules of Procedure	155
b.	<u>Article 4: Derogations in Times of Public Emergency</u>	
i.	Human Rights Committee, <i>General Comment 29</i> (re-read)	135
ii.	Human Rights Committee, <i>Jorge Landinelli Silva et al. v. Uruguay, Communication No. 34/1978 (8 April 1981), U.N. Doc. CCPR/C/OP/1 at 65 (1984)</i>	159
c.	<u>Article 6: The Right to Life</u>	
i.	Human Rights Committee, <i>General Comment 6</i> (re-read)	127
ii.	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990.	162

iii.	Human Rights Committee, <i>Pedro Pablo Camargo v. Colombia</i> [<i>Guerrero v. Colombia</i>] Communication No. 45/1979, U.N. Doc. CCPR/C/OP/1 at 112 (1985).	168
iv.	Human Rights Committee, <i>Baboeram et al v. Suriname</i> , Communication No. 146/1983 and 148 to 154/1983, U.N. Doc. Supp. No. 40 (A/40/40) at 187 (1985)	180
v.	Human Rights Committee, <i>Daniel Monguya Mbenge v. Zaire</i> , Communication No. 16/1977 (8 September 1977), U.N. Doc. Supp. No. 40 (A/38/40) at 134 (1983).	188
vi.	Human Rights Committee, <i>Ms. Yekaterina Pavlovna Lantsova v. The Russian Federation</i> , Communication No. 763/1997, U.N. Doc. CCPR/C/74/D/763/1997 (2002)	195
vii.	ICJ, <i>Construction of a Wall Advisory Opinion</i> , re-read paras. 105-107	Vol. 1 pg. 516
d.	<u>Article 7: The Prohibition on Torture and Inhumane Treatment</u>	
i.	Human Rights Committee, <i>General Comments 7 and 20</i> (re-read)	129, 132
ii.	Nowak, <i>CCPR Commentary</i> , pp. 161-168, 172-185.	199
iii.	Human Rights Committee, <i>Almeida de Quinteros v. Uruguay</i> , Communication No. 107/1981, UN Doc. CCPR/C/19/107/1981 (1983)	211
iv.	Human Rights Committee, <i>Boucherf v. Algeria</i> , Communication No. 1196/2003, CCPR/C/86/D/1196/2003 (2006)	222
v.	Human Rights Committee, <i>Alzery v. Sweden</i> , Communication No. 1416/2005, UN Doc. CCPR/C/88/D/1416/2005 (2006)	235
vi.	European Court of Human Rights, <i>Ilascu v Moldova</i> , pp.94-101	276
e.	<u>Article 9: The Prohibition on Arbitrary Detention</u>	
i.	Human Rights Committee, <i>Blanco v. Nicaragua</i> , Communication No. 328/1988, U.N. Doc. CCPR/C/51/D/328/1988 (1994).	284
ii.	Human Rights Committee, <i>Beatriz Weismann Lanza and Alcides Lanza Perdomo v. Uruguay</i> , Communication No. R. 2/8 (20 February 1977), U.N. Doc. Supp. No. 40 (A/35/40) at 111 (1980).	293

- iii. *William Eduardo Delgado Páez v. Colombia, Communication No. 195/1985, U. N. Doc. CCPR/C/39/D/195/1985 (1990)*301

Week 9 Reading Week (5-9 November)

Weeks 10 and 11 (12 and 19 November)

- **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**
 - a. What is a social right?
 - i. Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press: Boston, 1941), pp.171-186, 257-268308
 - ii. Stephen Holmes and Cass Sunstein, *The Cost of Rights* (Norton: New York, 1999) pp. 35-48, 221-232.325
 - b. Human Rights and Economic and Social Rights
 - i. Universal Declaration of Human Rights, arts. 22-27 (see Week 3)Vol. 1 pg. 59
 - ii. Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon: Oxford, 1995) pp. 16-29341
 - iii. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*349
 - c. Nature of Obligations and the Committee
 - i. ICESCR, Art. 2, Art 16-17.352
 - ii. Craven, pp. 37-50 (creation of the committee), 87-92.353
 - iii. Craven, pp. 109-116 (obligation to respect, protect and fulfill).360
 - iv. Committee on Economic, Social and Cultural Rights, *General Comment No. 3* (1990), Nature of States' Parties Obligations.366
 - v. Audrey Chapman and Sage Russell, eds, *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Intersentia: Antwerp, 2002) pp.1-18370
 - vi. ICJ, *Legal Consequences of the Construction of a Wall*, paras. 112-114 (see Week 4)519
 - d. The Right to Health
 - i. ICESCR, Art. 12350

ii.	General Comment 14.	380
iii.	“Health” in Susan Marks and Andrew Clapham, <i>International Human Rights Lexicon</i> (Oxford University Press: Oxford, 2006) pp. 197-208.	398
iv.	<i>Soobramoney v Minister of Health, Kwa-Zulu Natal</i> , Constitutional Court of South Africa, CCT 32/97 (27 November 1997)	406
v.	<i>Minister of Health v Treatment Action Campaign</i> , Constitutional Court of South Africa, CCT 8/02 (5 July 2002).	441

Further Reading:

vi.	Sandra Liebenberg, “Needs, Rights and Transformations: Adjudicating Social Rights”, CHRGI Working Paper 8/2005, pp.18-33.	519
vii.	Varun Gauri, “Social Rights and Economics: Claims to Health Care and Education in Developing Countries” in Alston and Robinson, eds, <i>Human Rights and Development: Towards Mutual Reinforcement</i> (Oxford University Press: Oxford 2005) pp.65-86.	536

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e.	<u>The Right to Food</u>	
i.	ICESCR, Art. 11.	Vol. 2 pg. 350
ii.	General Comment No. 12	1
iii.	“Food” in Marks and Clapham, pp. 163-178	9
iv.	Jean Drèze, “Democracy and the Right to Food” in Alston and Robinson, eds, pp. 45-64	19
v.	Interim Order, Supreme Court of India, <i>PUCL v Union of India</i> (May 2003).	49
vi.	Smita Narula, “The Right to Food: Holding Global Actors Accountable Under International Law,” CHRGI Working Paper 07/2006, pp.14-24.	55

Week 12 (26 November) (A Makeup Class will be scheduled in this week)

- **Human Rights and Political Praxis I**
 - a. Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago: Chicago, 2005) pp.36-70, 134-139, 179-81, 184-217.

- b. Neve Gordon and Nitza Berkovitch, "Human Rights Discourse in Domestic Settings: How Does it Emerge?" (2007) 55 *Political Studies* 243-266107
- c. Andrew Moravcsik, "The Origins of Human Rights Regimes: The Origins of Democratic Delegation in Postwar Europe" Vol.54, No.2 (2000) *International Organization*, pp. 217-252.131
- **Human Rights and Political Praxis II**
 - a. David Stoll, "To Whom Should We Listen? Human Rights Activism in Two Guatemalan Land Disputes," in Richard Wilson, ed., *Human Rights, Culture and Context: Anthropological Perspectives* (Pluto Press: London, 1997) pp. 187-215.166
 - b. Makau Mutua, "The Limits of Rights Discourse," in *Human Rights: A Political and Cultural Critique* (University of Pennsylvania: Philadelphia, 2002) pp.126-153182
 - c. David Rieff, "The False Dawn of Civil Society", *The Nation* (New York), February 22, 1999, <http://www.thenation.com/doc/19990222/rieff>....211
 - d. Joshua Kurlantzick. "Global Gun Rights?", *New York Times Magazine*, September 17, 2006.216
 - e. Kenneth Anderson, "The Ottawa Convention Banning Landmines, The Role of International Non-Governmental Organizations and the Idea of International Civil Society" Vol.11 (2000) *European Journal of International Law*, pp.104-120.217
- Further reading:
 - f. Mahmood Mamdani, "The Politics of Naming: Genocide, Civil War, Insurgency" *London Review of Books*, 8 March 2007.247
 - g. Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press: Ithaca, 1998)
 - h. Vasuki Nesiah and Alan Keenan, "Human Rights and Sacred Cows: Framing Violence, Disappearing Struggles", in Neve Gordon, ed, *Human Rights from the Margins: Critical Interventions from Around the Globe* (Lexington Books, 2004).257
 - i. Yves Dezalay and Bryant Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (University of Chicago: Chicago, 2002)

Additional Topic – Time Permitting

- **Beyond Universalism and Relativism**

- a. Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago: Chicago, 2005) pp. 1-35.301
- b. Belinda Preis, “Human Rights as a Cultural Practice” Vol. 18 (1996) *Human Rights Quarterly* pp. 286-315.321
- c. Rainer Forst, “The Basic Right to Justification: Toward a Constructivist Conception of Human Rights,” *Constellations*, Vol.6 (1999) pp.35-60.351

Analytical Paper Due 4 December, to be submitted to Records Office.

Week 13 3 December

- **The Futures of International Human Rights: Global Justice or Imperial Right?.**
 - a. Mike Davis, “Planet of the Slums” *New Left Review*, No. 26, March-April 2004, pp.5-34.377
 - b. Craig Calhoun, “The Emergency Imaginary: Humanitarianism, States and the Limits of Cosmopolitanism”, forthcoming, *Constellations*.....407
 - c. Jean Cohen, “Sovereign Equality vs. Imperial Right”, manuscript, forthcoming in *Constellations: An International Journal of Democratic and Critical Theory*.442

